

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD**

IN THE MATTER OF

**RHODE ISLAND STATE LABOR
RELATIONS BOARD**

CASE NO: ULP-5506

-AND-

**BRISTOL/WARREN REGIONAL
SCHOOL DISTRICT**

**ORDER OF DENIAL OF
RESPONDENT'S MOTION TO DISMISS**

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board"), on an Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against the Bristol/Warren Regional School District (hereinafter "Respondent"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated October 26, 2000, and filed on October 31, 2000, by the Bristol/Warren Education Association/NEARI (hereinafter "Union").

The Charge alleged:

The Bristol/Warren School Committee failed and refused to reappoint Michael Twohey to the position of Social Studies Department Head at Mt. Hope High School. Said action by the School Committee was retaliation against Michael Twohey for his protected union activities as President of Bristol/Warren Education Association/NEARI, including leading a strike in Sept. 1999. Such actions constitute interference harassment, restraint and coercion of union members in the exercise of concerted and protected activities in violation of RIGL 28-7-13 (3), (5), (8), (10)

Following the filing of the Charge, an informal conference was scheduled for November 29, 2000, but was rescheduled to January 24, 2001. Representatives of the Union and Respondent and an Agent of the Board all attended and had the opportunity to try to resolve the matter. After the informal conference failed to resolve the Charge, the Board reviewed the matter at a meeting held on February 15, 2001, and determined that a Complaint would issue. The parties were advised of the Board's decision by letter dated February 19, 2001. The Complaint was issued on July 13, 2001. The Employer filed its Answer to the Complaint on July 25, 2001, denying the allegations therein and asserting numerous affirmative defenses. The matter was then set down for formal hearing scheduled for November 15, 2001. At the request of the parties, the formal hearing was continued twice and was finally held on November 21, 2002.

On November 8, 2002, the Employer filed a Motion to Dismiss, relying on an election-of-remedies argument and the Rhode Island Supreme Court's decision of State of Rhode Island, Department of Environmental Management v Rhode Island State Labor Relations Board, 799 A2d 274 (R. I. 2002), hereinafter referred to as the "D.E.M." case. The Union filed an Objection to the Motion to Dismiss on November 12, 2002.

On November 21, 2002, at the commencement of the formal hearing, the Board determined that it would hear argument only on the issue of the Motion to Dismiss and not on any other substantive matters. The parties were advised that the Board would rule on the Motion first, and then reschedule the substantive hearings, if any were necessary after ruling on the Motion.

DISCUSSION

Since the D.E.M. matter was decided after the Board issued its Complaint in the matter herein, the Board must analyze whether or not its jurisdiction in this case has been subsequently impacted thereby. The Employer argues that the exact issue of union discrimination has already been heard by an arbitrator, pursuant to a "retaliation clause" in the parties' collective bargaining agreement. The Employer also argues the legal doctrine of stare decisis precludes the Board from hearing this matter. The Employer cites the Board's recent decision in ULP-5370, wherein the Board dismissed a Complaint based upon the election-of-remedies doctrine.

The Employer also argues that the issue of the unfair labor practice herein was also before the arbitrator, and that the arbitrator has already ruled thereon. The Employer also argues that even the arbitrator made a ruling that the issue before him, and the unfair labor practice were one in the same issue.

The Union argues that the Board's decisions in ULP-5370 and ULP-5493 provide no valuable precedent for this Board to follow, because in both of those cases, the Unions did not object, for whatever reason, to Motions to Dismiss pursuant to the election-of-remedies doctrine. The Union argues that the DEM case stands for the proposition that, for the election-of-remedies doctrine to apply, the party seeking relief in two different forums must be seeking essentially the same relief from both forums. The Union argues that, multiple proceedings are not automatically foreclosed, and that the Board must determine whether the relief sought is "essentially the same". The Union argues that the arbitration sought the remedy of reinstatement to a position and the

award of back pay -- not an uncommon request in an arbitration setting. The remedy sought from the Board within this proceeding is a finding that the Employer's actions were repugnant to the State Labor Relations Act, in that an employee was discriminated against in his role as a union officer, and a cease and desist order. The Union argues that these remedies are very different. The Union also argues that the arbitrator did not make a finding on the issue of discrimination. The arbitrator merely stated that he did not conclude that the employee had been discriminated against. The Union argues that the arbitrator never really did much inquiry into this issue, or make any conclusions on this issue for two reasons: (1) because the arbitrator had already ruled in favor of the Union and did not need to reach the question of discrimination; and, (2) the arbitrator realized that the discrimination issue was one for the Labor Board to review. Thus, the Union argues that the arbitrator deferred and stepped to the side on this issue.


First of all, the Board finds that the Union's argument regarding the differing nature of the remedies sought persuasive. There can be no question that reinstatement and back pay are remedies unique to the individual grievant, and do not truly affect the collective bargaining process or the Union itself, in a practical manner. The remedy of a cease and desist order barring an employer from engaging in discrimination for union activities protects the union itself and the collective bargaining process, and is a remedy for the common good. Therefore, the Board finds that the remedies sought from the arbitration and the Board herein are not essentially the same, or even similar, in that they are designed to protect differing interests.

As to the issue of whether the arbitrator made a decision on the issue of discrimination, although the Board wishes the award was written more clearly, it does appear to the Board that the arbitrator did not reach the issue of discrimination, because he had already ruled that the Employer's actions violated the contract. The Board believes that, when the arbitrator stated that he does not conclude, he is implicitly saying that he did not reach the issue, because he did not need to. Therefore, the Board finds that the arbitrator did not consider the specific issues of discrimination and retaliation for union activity and that the arbitration award poses no bar to the Board's jurisdiction in this matter. Therefore, the Employer's Motion to Dismiss is hereby denied, and the case is ordered back to the Board's formal hearing calendar for scheduling.

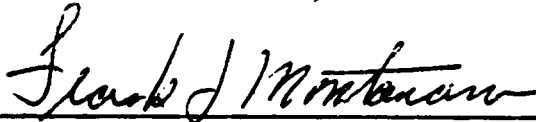
ORDER

- 1) The Motion to Dismiss is hereby denied.

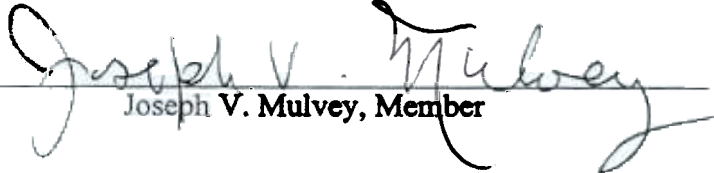
RHODE ISLAND STATE LABOR RELATIONS BOARD



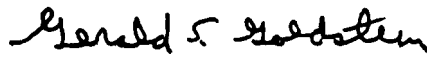
Walter J. Lanni, Chairman



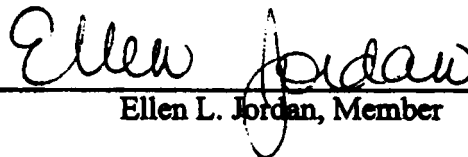
Frank J. Montanaro, Member



Joseph V. Mulvey, Member



Gerald S. Goldstein, Member



Ellen L. Jordan, Member



John R. Capobianco, Member

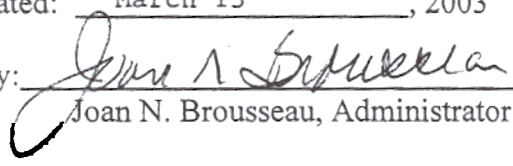


Elizabeth S. Dolan, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: March 13, 2003

By:


Joan N. Brousseau, Administrator